

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number: _____

Meeting Type: Regular

Meeting Date: Jul 24, 2014

Action Requested By: Legal

Agenda Type: Resolution

Subject Matter:

Sale of 103 Wynn Drive to Calhoun Community College.

Exact Wording for the Agenda:

Resolution authorizing the Mayor to execute an Environmental Covenant for the former Chrysler/Acustar site at 103 Wynn Drive to facilitate the sale of said property to Calhoun Community College.

Note: If amendment, Please state title and number of the original

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what council action will provide, allow and accomplish and; any other information that might be helpful.

Associated Cost: _____

Budgeted Item: Not Applicable

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head: 

Date: 7-22-14

RESOLUTION NO. 14-_____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and he is hereby authorized to execute an Environmental Covenant for the portion of the former Chrysler/Acustar property at 103 Wynn Drive, to be acquired by the City pursuant to the Purchase and Sale Agreement previously approved by City of Huntsville, Alabama, Resolution No. 14-197, adopted and approved on March 13, 2014, which said Environmental Covenant is substantially in words and figures similar to that certain document attached hereto and identified as "Environmental Covenant," consisting of ten (10) pages including Exhibit A, and the date of July 24, 2014, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, and an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the 24th day of July, 2014.

President of the City Council of
the City of Huntsville, Alabama

APPROVED this the 24th day of July, 2014.

Mayor of the City of
Huntsville, Alabama

For Execution

ENVIRONMENTAL COVENANT

The City of Huntsville, Alabama, an Alabama municipal corporation (hereinafter "Grantor"), grants an Environmental Covenant (hereinafter "Covenant") this ____ day of _____, 2014, to the following entities pursuant to The Alabama Uniform Environmental Covenants Act, Ala. Code §§ 35-19-1 to 35-19-14 (2007 Cum. Supp.) (hereinafter "the Act" or "Act"), and the regulations promulgated thereunder: the Alabama Department of Environmental Management:

WHEREAS, the Grantor is the owner of certain real property located in the City of Huntsville, Alabama, consisting of the southwest corner of the former Chrysler/Acustar site at 103 Wynn Drive, in Madison County, Alabama, (hereinafter "the Property") which was conveyed to Grantor by deed dated _____, 2014, and recorded in the Office of the Judge of Probate for Madison County, Alabama, in Deed Book, Page/Document Number _____;

WHEREAS, the Property is more particularly described as the following:

See Attached Exhibit A

WHEREAS, this instrument is an Environmental Covenant developed and executed pursuant to the Act and the regulations promulgated thereunder;

WHEREAS, a release of pollutants or contaminants, including, but not limited to, Benzene, Bromodichloromethane, Chloroform, Dibromochloromethane, 1,1-Dichloroethene, 1,2-Dichloroethene, 1,1-Dichloroethane, 1,2-Dichloroethane, Ethylbenzene, Methylene Chloride, Mtbe, Naphthalene, Tetrachloroethene, Toluene, 1,1,1-Trichloroethane, Trichloroethene, Trichlorofluoromethane, 1,2,4-Trimethylbenzene, 1,3,5-Trimethylbenzene, Xylene, and n-Propylbenzene (Propyl Benzene).

WHEREAS, the concentrations of the pollutants/contaminants do not warrant the implementation of remedial action:

WHEREAS, the Act requires institutional controls to be implemented to address the effects of the release/disposal and to protect the remedy so that exposure to the pollutants or contaminants is controlled by restricting the use of the Property and the activities on the Property;

WHEREAS, pollutants or contaminants remain on the Property;

President of the City Council of the
City of Huntsville, Alabama
Date: _____

WHEREAS, the purpose of this Covenant is to ensure protection of human health and the environment by placing restrictions on the Property to reduce the risk to human health to below the target risk levels for those pollutants or contaminants that remain on the Property;

WHEREAS, due to volatile organic compound contamination in the groundwater, the exposure pathway of concern is ingestion of groundwater and inhalation of volatile organic compound vapors;

WHEREAS, further information concerning the release/disposal and the activities to correct the effects of the release/disposal may be obtained by contacting Chief, Land Division, Alabama Department of Environmental Management ("ADEM"), or his or her designated representative, at 1400 Coliseum Boulevard, Montgomery, Alabama, 36110; and

WHEREAS, the Administrative Record concerning the Property is located at:

Alabama Department of Environmental Management
1400 Coliseum Boulevard
Montgomery, Alabama 36110

NOW, THEREFORE, Grantor hereby grants this Environmental Covenant to the Holder, and declares that the Property shall hereinafter be bound by, held, sold, used, improved, occupied, leased, hypothecated, encumbered, and/or conveyed subject to the following requirements set forth in paragraphs 1 through 3 below:

1. **DEFINITIONS**

Owner. "Owner" means the GRANTOR, its successors and assigns in interest.

2. **USE RESTRICTIONS**

The following use restrictions are hereby imposed on the Property, which use restrictions shall not be changed or modified without obtaining prior written approval from ADEM through modification of this Covenant:

- A. Use of the Property shall be limited to industrial or commercial use only, including, without limitation, use for vehicular parking, traffic and pedestrian ways, whether public or private, public streets and for educational facilities associated with post-secondary education but not including residential.
- B. The groundwater underlying the Property shall not be used for potable or irrigation purposes. If groundwater extraction is required for construction or utility dewatering activities, such groundwater shall be managed and disposed of in accordance with applicable ADEM rules and regulations. Extracted groundwater shall not be discharged into any storm water system or surface waters without prior approval of ADEM.

- C. Excavation of any contaminated soils upon the Property without proper soil management is prohibited.

3. **GENERAL PROVISIONS**

- A. **Restrictions to Run with the Land.** This Environmental Covenant runs with the land pursuant to Ala. Code §35-19-5 (2007 Cum Supp.); is perpetual, unless modified or terminated pursuant to the terms of this Covenant pursuant to Ala. Code §35-19-9 (Cum Supp. 2007); is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof; inures to the benefit of and passes with each and every portion of the Property; and binds the Owner, the Holders, all persons using the land, all persons, their heirs, successors and assigns having any right, title or interest in the Property, or any part thereof who have subordinated those interests to this Environmental Covenant, and all persons, their heirs, successors and assigns who obtain any right, title or interest in the Property, or any part thereof after the recordation of this Environmental Covenant.
- B. **Notices Required.** In accordance with Ala. Code §35-19-4(b) (2007 Cum Supp.), the Owner shall send written notification, pursuant to Section I, below, following transfer of a specified interest in, or concerning proposed changes in use of, applications for building permits for, or proposals for any site work affecting the contamination on, the Property. Said notification shall be sent within fifteen (15) days of each event listed in this Section.
- C. **Registry/Recordation of Environmental Covenant; Amendment; or Termination.** Pursuant to Ala. Code §35-19-12(b) (2007 Cum Supp.), this Environmental Covenant and any amendment or termination thereof, shall be contained in ADEM's registry for environmental covenants. After an environmental covenant, amendment, or termination is filed in the registry, a notice of the covenant, amendment, or termination may be recorded in the land records in lieu of recording the entire covenant in compliance with §35-19-12(b). Grantor shall be responsible for filing the Environmental Covenant within thirty (30) days of the final required signature upon this Environmental Covenant.
- D. **Right of Access.** The Owner hereby grants ADEM; ADEM's agents, contractors and employees; the Owner's agents, contractors and employees; and any Holders the right of access to the Property for implementation or enforcement of this Environmental Covenant.
- E. **ADEM Reservations.** Notwithstanding any other provision of this Environmental Covenant, ADEM retains all of its access authorities and rights, as well as all of its rights to require additional land/water use restrictions, including enforcement authorities related thereto.
- F. **Representations and Warranties.** Grantor hereby represents and warrants to the other signatories hereto:

- i. That the Grantor has the power and authority to enter into this Environmental Covenant, to grant the rights and interests herein provided and to carry out all obligations hereunder;
- ii. That the Grantor is the sole owner of the Property and holds fee simple title which is free, clear and unencumbered;
- iii. That the Grantor has identified all other parties that hold any interest (e.g., encumbrance) in the Property and notified such parties of the Grantor's intention to enter into this Environmental Covenant;
- iv. That this Environmental Covenant will not materially violate, contravene, or constitute a material default under, any other agreement, document, or instrument to which Grantor is a party, by which Grantor may be bound or affected;
- v. That this Environmental Covenant will not materially violate or contravene any zoning law or other law regulating use of the Property;
- vi. That this Environmental Covenant does not authorize a use of the Property which is otherwise prohibited by a recorded instrument that has priority over the Environmental Covenant.

G. Compliance Enforcement. In accordance with Ala. Code §35-19-11(b) (2007 Cum Supp.), the terms of the Environmental Covenant may be enforced by the parties to this Environmental Covenant; any person to whom this Covenant expressly grants power to enforce; any person whose interest in the real property or whose collateral or liability may be affected by the alleged violation of the Covenant; or a municipality or other unit of local government in which the real property subject to the Covenant is located, in accordance with applicable law. The parties hereto expressly agree that ADEM has the power to enforce this Environmental Covenant. Failure to timely enforce compliance with this Environmental Covenant or the use or activity limitations contained herein by any person shall not bar subsequent enforcement by such person and shall not be deemed a waiver of the person's right to take action to enforce any non-compliance. Nothing in this Environmental Covenant shall restrict ADEM, or the Grantor, from exercising any authority under applicable law.

H. Modifications/Termination. Any modifications or terminations to this Environmental Covenant must be made in accordance with Ala. Code §§35-19-9 and 35-19-10 (2007 Cum Supp.).

I. Notices. Any document or communication required to be sent pursuant to the terms of this Environmental Covenant shall be sent to the following persons:

ADEM

Chief, Land Division
Alabama Department of Environmental Management
1400 Coliseum Boulevard
Montgomery, AL 36110

Grantor

City of Huntsville, Alabama Department of Urban
Development
Attn: Shane A. Davis, P.E.
Director of Urban Development City of Huntsville
320 Fountain Circle
Huntsville, AL 35801
Phone: (256) 427-5310
Fax: (256) 427-5325
E-Mail: shane.davis@Huntsvilleal.gov

Holder(s) or Other Applicable Party(ies)

None

- J. **No Property Interest Created in ADEM.** This Environmental Covenant does not in any way create any interest by ADEM in the Property that is subject to the Environmental Covenant. Furthermore, the act of approving this Environmental Covenant does not in any way create any interest by ADEM in the Property in accordance with Ala. Code §35-19-3(b) (2007 Cum. Supp.).
- K. **Severability.** If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.
- L. **Governing Law.** This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Alabama.
- M. **Recordation.** In accordance with Ala. Code §35-19-8(a) (2007 Cum. Supp.), Grantor shall record this Environmental Covenant and any amendment or termination of the Environmental Covenant in every county in which any portion of the real property subject to this Environmental Covenant is located. Grantor agrees to record this Environmental Covenant within fifteen (15) days after the date of the final required signature upon this Environmental Covenant.
- N. **Effective Date.** The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant has been recorded, in accordance with Ala. Code §35-19-8(a) (2007 Cum. Supp.).

- O. **Distribution of Environmental Covenant.** Within fifteen (15) days of filing this Environmental Covenant, the Grantor shall distribute a recorded and date stamped copy of the recorded Environmental Covenant in accordance with Ala. Code §35-19-7(a) (2007 Cum Supp.). However, the validity of this Environmental Covenant will not be affected by the failure to provide a copy of the Covenant as provided herein.
- P. **ADEM References.** All references to ADEM shall include successor agencies, departments, divisions, or other successor entities.
- Q. **Grantor References.** All references to the Grantor shall include successor agencies, departments, divisions, or other successor entities.
- R. **Other Applicable Party(ies).** All references to Other Applicable Party(ies) shall include successor agencies, departments, divisions, or other successor entities.

Property owner has caused this Environmental Covenant to be executed pursuant to The Alabama Uniform Environmental Covenants Act, on this ____ day of _____ 2014.

IN TESTIMONY WHEREOF, the parties have hereunto set their hands this the day and year first above written.

This instrument prepared by:

T. Bruce McGowin, Esq.
Hand Arendall LLC
P.O. Box 123
Mobile, Alabama 36601
(241) 694-6342

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

This Environmental Covenant is hereby approved by the State of Alabama this _____ day of _____, 2014.

By: _____
Phillip D. Davis
Chief, Land Division
Alabama Department of Environmental Management

The foregoing Environmental Covenant was acknowledged before me by Phillip D. Davis, Chief, Land Division, Alabama Department of Environmental Management, this _____ day of _____, 2014.

Notary Public

My Commission Expires: _____

STATE OF ALABAMA

COUNTY OF MADISON

I, Tommy Ragland, Judge of Probate for Madison County, Alabama, do certify that the foregoing Environmental Covenant was lodged in my office for record, and that I have recorded it, this ____ day of _____, 2014 in the Document No. _____.

Tommy Ragland
Judge of Probate

NAME OF GRANTOR, ALABAMA

This Environmental Covenant is hereby approved by the City of Huntsville, Alabama, an Alabama municipal corporation this ____ day of _____, 2014.

**CITY OF HUNTSVILLE, ALABAMA,
an Alabama municipal corporation**

By: _____
Tommy Battle, Mayor

ATTEST:

By: _____
Charles E. Hagood
Clerk-Treasurer

State of Alabama
County of Madison

The foregoing Environmental Covenant was acknowledged before me by _____, a Notary Public in and for said County, in said State, that Tommy Battle and Charles E. Hagood, whose names as Mayor and City Clerk-Treasurer, respectively, of the CITY OF HUNTSVILLE, an Alabama municipal corporation, are signed to the foregoing instrument, and they are known to me, that they acknowledged before me on this day that, being informed of the contents of this instrument, they, as such officers and with full authority, executed the same for and as the act of said City of Huntsville, an Alabama municipal corporation, as of the day the same bears date

Notary Public

My Commission Expires: _____

Exhibit A

Tract 3 of Calhoun Community College Place as recorded in that certain Minor Plat "Calhoun Community College Place, Calhoun Huntsville Campus, Section 5, Township 4 South, Range 1 West, Huntsville, Madison County, Alabama" on May 7, 2014, as Document No. 20140507000237870 in the Office of the Judge of Probate for Madison County, Alabama.